

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DONNA DORSEY DAVIS,**  
as an individual and derivatively upon  
behalf of I-65 Properties, Inc.,

**Plaintiff,**

**VS.**

**RICHARD M. DORSEY, as an individual  
and CD&O, LLC, as a necessary party,**

**Defendants.**

[illegible]

**Case No. 2:06-cv-766-MHT**

**DEFENDANTS' MOTION TO STRIKE**  
**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COME NOW Richard M. Dorsey and CD&O, LLC, Defendants in the above-styled cause, and move this Court to strike Plaintiff's *Motion for Summary Judgment* as untimely. In support of this motion, Defendants rely on the following:

1. Pursuant to Section 2 of this Court's Uniform Scheduling Order dated November 2, 2006, dispositive motions were to be filed no later than ninety days prior to the pretrial hearing, or March 19, 2007.
2. Defendants timely filed their *Motion for Summary Judgment* on March 19, 2007.
3. On April 9, 2006, Plaintiff filed both a *Motion for Summary Judgment* and a separate *Response in Opposition to Defendants' Motion for Summary Judgment and in the Alternative, Brief in Support of Plaintiff's Cross Memorandum Brief in Support of Motion for Summary Judgment*.<sup>1</sup>

4. The body of the latter document is specifically divided into two sections, "Reply to Defendant's Arguments and Conclusions of Law" and "Plaintiff's Cross Claim for Summary Judgment on Defendant's Counterclaim".<sup>2</sup>
5. To the extent that Plaintiff now seeks to file a dispositive motion in this matter, such is due to be stricken as untimely filed.

Wherefore the premises having been considered, Defendants respectfully request the Court to strike Plaintiff's *Motion for Summary Judgment* as untimely, or in the alternative, grant Defendants the opportunity to respond to said motion.

Respectfully Submitted this 11<sup>th</sup> day of April, 2007.

RICHARD M. DORSEY, as an individual, and  
CD&O, LLC, as a necessary party,

/s/ Clifford W. Cleveland  
CLIFFORD W. CLEVELAND

OF COUNSEL:

CLEVELAND & COLLEY, P.C.  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed the foregoing *Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment* with the Clerk of the Court for the United States District Court, for the Middle District of Alabama, Northern Division, using the CM/ECF system which will send notification of such filing to Lindsay B. Erwin, Esquire (lindsayerwin@gmail.com) and James Edward Roberts, Esquire (attyjuris@aol.com) this the 11<sup>th</sup> day of April, 2007.

/s/ Clifford W. Cleveland  
OF COUNSEL

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<sup>2</sup>Plaintiff's alternative party-designations have been omitted.